

Seals—State Seal—Brands—Creameries—Registration.

The word "Seal of Montana" may lawfully be registered by the department of agriculture as a private butter brand, under section 2629 R.C.M. 1921, as amended by chapter 35, session laws 1923.

Neither the great seal of the State of Montana nor the insignia appearing thereon may lawfully be registered as a private butter brand.

G. A. Norris, Esq.,
Chief of Dairy Division,
Department of Agriculture,
Helena, Montana.

May 27, 1927.

My dear Mr. Norris:

You have submitted the following inquiry:

"Will you kindly advise if the name 'Seal of Montana' can be used as a butter brand for a creamery operating within the state.

"This brand would not include the seal in its entirety, such as the great seal of Montana, nor would it be necessary to include the insignia that is part of the seal. However, I should like to be informed if the use of the entire insignia, eliminating the words "Great Seal' could be used."

Section 2629 of the code, as amended by section 4 of chapter 35, session laws 1923, reads as follows:

"When any dealer in dairy products wishes to retain for himself a name, brand or trademark, the same may be registered with the State Department of Agriculture, Labor and Industry and on no account shall that name, brand or trademark be used by another, unless duly consigned, given or sold to him by the originator or by the one to whom it belongs."

You will note that in substance this section authorizes the registration of a "name, brand or trademark" with your department, and it gives no directions as to what sort of a name, brand or trademark may be so registered.

Section 526 of the code reads as follows:

"The great seal of the state is as follows: A central group representing a plow, a miner's pick and shovel; upon the right representation of the great falls of the Missouri River; upon the left mountain scenery, and underneath the words 'Oro y Plata.' The seal must be two and one-half inches in diameter, and surrounded by these words: 'The Great Seal of the State of Montana.'"

The section above quoted does not contain any declaration to the effect that the state of Montana shall have the right to the exclusive use of this seal, nor has the legislature ever enacted any laws prohibiting the use of the state seal by private persons for commercial or advertising purposes. Legislation of this sort has been passed prohibiting such use of the American flag (section 11561). However, even in the absence of any such legislation, it is my opinion that the great seal of the state of Montana ought rightfully to be used only for the purpose of authenticating official acts or publications of this state. In the absence of a specific statute dealing with the matter a person could not be prosecuted criminally for an unauthorized use of the state seal. The fact, however, that we have no such criminal statute should not, in my

opinion, lead to the conclusion that the legislature intended that the state seal might be used by a private individual for commercial purposes.

It is my opinion that state officials ought not to give official sanction to the private use of the state seal for commercial or advertising purposes, such as would result in case you should register the state seal as a private butter brand. Hence, I conclude that you should refuse to register either the entire seal or the insignia appearing thereon as a private butter brand.

I think, however, that there can be no objection to registering the mere words "Seal of Montana" since the state of Montana has never asserted any exclusive right to the use of those words.

You may, therefore, in my opinion, properly register said words as a butter brand for a creamery operating within this state.

Very truly yours,

L. A. FOOT,
Attorney General.